

Before the  
U.S. Department of Transportation  
Federal Aviation Administration  
Washington, D.C.

|                          |   |                       |
|--------------------------|---|-----------------------|
| In the matter of:        | ) |                       |
|                          | ) |                       |
| Operating Limitations at | ) | Docket FAA-2006-25755 |
| LaGuardia Airport        | ) |                       |
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**COMMENTS OF US AIRWAYS GROUP, INC.**

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July 1, 2009

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**COMMENTS OF US AIRWAYS GROUP, INC.**

US Airways Group, Inc. (“US Airways”)<sup>1</sup> hereby comments on the Notice of Order to Show Cause and Request for Information (“Notice”) promulgated on June 17, 2009, by the Federal Aviation Administration (“FAA”) regarding Operating Limitations at LaGuardia Airport (“LaGuardia” or “LGA”).<sup>2</sup> (*See* 74 Fed. Reg. 28772-74, June 17, 2009, FAA-2006-25755.) In addition to submitting these comments, US Airways assisted in the preparation of, and fully supports, the comments of the Air Transport Association, also filed in this docket.

US Airways shares the FAA’s concern about congestion at LaGuardia, and the need to avoid further situations like Summer 2007, when congestion related delays throughout the Manhattan-area reached all-time highs, severely impacting consumers both in New York and across the country. Thus, for all of the reasons set forth in the Notice, US Airways supports the

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<sup>1</sup> US Airways Group, Inc. is the holding company for US Airways, Inc., and PSA Airlines, Inc., as well as Piedmont Airlines, Inc., a Part 298 operator.

<sup>2</sup> In the Notice, the FAA proposes to extend the order limiting scheduled operations at LGA. (*See* 71 Fed. Reg. 77854, December 27, 2006, (as amended by 72 Fed. Reg. 63224, November 8, 2007; 73 Fed. Reg. 48428, August 19, 2008; 74 Fed. Reg. 845, January 8, 2009; and 74 Fed. Reg. 2646, January 15, 2009) (“Interim Rule”).)

extension proposed by the FAA, to allow further time for the development and implementation of a final rule to address congestion at LaGuardia.<sup>3</sup>

However, as part of extending the Interim Rule, US Airways urges the FAA also to remove the current prohibition on permanently buying, selling, and transferring slots at LaGuardia (“Buy-Sell Prohibition”). (*See* 71 Fed. Reg. 77854, at 77857, December 27, 2006 (“Permanent sales, purchases, or transfers of Operating Authorizations will not be permitted.”).)<sup>4</sup>

US Airways has expressed concern about the Buy-Sell Prohibition since its original conception, and has consistently stated that the restriction prevents carriers from exercising individual discretion in optimizing their LaGuardia operations for the benefit of consumers. (*See, e.g.*, Comments of US Airways Group, Inc., September 6, 2007, Docket FAA-2006-25755, p. 5-6 (“Carriers should be free to decide for themselves whether it is in their interest to buy or sell [slots]... [I]ndividual carriers are in the best position to determine any risk associated with transfers given the possibility of future government action.”); *and* Comments of US Airways Group, Inc., October 16, 2006, Docket FAA-2006-25755, p. 2-3 (“Enabling carriers to manage their operating authorizations is fully consistent with FAA’s recognition... that a secondary market mechanism is necessary for the efficient operation of the airport.”).

The FAA intended the Buy-Sell Prohibition as a short-term administrative convenience, to facilitate the implementation of a more permanent congestion management solution at LaGuardia. However, as a result of unwelcomed policy detours, we are no closer to a new rule for LGA today than when the Interim Rule took effect. Indeed, the FAA is currently seeking to

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<sup>3</sup> US Airways supports the rescission of the previous “final” congestion management rules promulgated by the FAA for LaGuardia, John F. Kennedy International Airport (“JFK”), and Newark Liberty International Airport (“EWR”), as those rules did not actually address the issue of congestion. (*See* Comments of US Airways Group, Inc., June 15, 2009, Dockets FAA-2006-25709 (LGA) and FAA-2008-0517 (JFK/EWR)(“Rescission Comments”).)

<sup>4</sup> Temporary leases, although permitted, do not provide the certainty that carriers need in making new service investments, particularly in the current economic climate.

rescind the previously issued long-term rules for LaGuardia,<sup>5</sup> and has stated that, “it is now unlikely that the FAA will have an effective final rule on the [Interim Rules’] current expiration date.” (*See* 74 Fed Reg. at 28773.)

Simply put, absent a pending long-term congestion management rule for LaGuardia, there is no present need for the administrative convenience of the Buy-Sell Prohibition. Furthermore, removing the Buy-Sell Prohibition would also enhance air carriers’ flexibility to respond to the economic recession that currently influences air travel demand.

It is presently unknown when a new rule at LaGuardia will actually be implemented; but if the FAA waits for a permanent rule to lift the Buy-Sell Prohibition, LGA will have been effectively frozen for nearly four years. Considering this, and the FAA’s previous acknowledgment of the need for a secondary market where long-term restrictions on carriers’ ability to operate exist,<sup>6</sup> US Airways urges the FAA to rescind the Buy-Sell Prohibition and allow carriers to decide for themselves whether it is in their interest to buy or sell LaGuardia slots, based on their own assessment of the risk of future government action.<sup>7</sup>

Finally, as US Airways previously stated in its Rescission Comments, the means by which slots are transferred among carriers does not alter the FAA’s ability to seek better ways of managing airport operations to reduce congestion. The FAA can reserve its views on property rights and still allow the purchase and sale of slots, with all potential buyers and sellers fully on

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<sup>5</sup> *See* Notice of Proposed Rescission, 74 Fed. Reg. 22714, May 14, 2009, FAA-2008-0517.

<sup>6</sup> *See* 73 Fed. Reg. 20846, at 20851, April 17, 2008 (“The FAA also believes the market should play an active role in the allocation of a limited resource whenever it becomes necessary to limit operations for more than a short period of time.”).

<sup>7</sup> Critics of the Buy-Sell rule claim that too few transactions occur for the rule to be useful. Such views are misplaced today as it is clear that the FAA is not interested in additional slots being created at New York-area airports, given its action to lower flight levels at all three New York airports. Thus, as Southwest demonstrated at LaGuardia, the only way to gain permanent access is to buy slots.

notice that the that the FAA is actively considering policy shifts that could affect their transactions.<sup>8</sup>

For the reasons stated in these comments, US Airways urges the FAA to extend the Interim Rule, as contemplated in the Notice, but to simultaneously eliminate the Buy-Sell Prohibition contained within the Interim Rule.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Howard Kass /BTS", is written over a horizontal line.

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<sup>8</sup> If the FAA believes it is necessary to further preserve its regulatory options, it could consider removing the Buy-Sell Prohibitions for a period of time, extending this window as necessary until a new rule for LGA was imminent, and the administrative convenience of temporarily freezing carrier operations was again necessary.